IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

Bail Appl..No. 4542 of 2007()

CRIME NO.127/07 OF KOONGADU POLICE STATION, PALAKKAD

PETITIONER : ACCUSED:

JAYAKUMAR, S/O.ACHUTHAN PANICKER,
AGED 43 YEARS, RESIDING AT NEDUMAM, KADAYIL VEEDU,
KOVALAM P.O., THOZHICHAL DESOM, THIRUVALLAM
VILLAGE, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.V.SANTHARAM
SRI.ANTO THOMAS

RESPONDENTS: COMPLAINANT:

STATE OF KERALA (SUB INSPECTOR OF POLICE
KOONGADU POLICE STATION, PALAKKAD.(CRIME NO,126/07
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 27/07/2007 ALONG WITH B.A.NOS.4543 & 4544 OF 2007,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.Nos.4542, 4543 & 4544 of 2007

Dated this the 27th day of July, 2007

ORDER

Applications for anticipatory bail. The common petitioner faces identical allegations under Sections 417 and 420 I.P.C in 3 crimes all registered on the basis of private complaints filed by the complainant and forwarded by the learned Magistrate to the police under Section 156(3) Cr.P.C. The crux of the allegations is that the defacto complainants had parted with the amounts of Rs.1 lakh, Rs.1 lakh and Rs.2 lakhs with the complainants on the promise by him that he shall secure employment abroad for them. Employment was not secured. The amounts were not repaid. Even the liability to repay was disputed.

2. According to the defacto complainants, the petitioner had the fraudulent intention to deceive the defacto complainants even when the transaction was entered into. That is declared eloquently by the fact that in the acknowledgment given by the petitioner to the defacto complainants the amount was described as having been paid on the strength of the promissory note and cleverly there was no reference to the obligation to secure employment. These are tell tale circumstances pointing to want of bona fides on the part of the petitioner, it is submitted.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He had appointed a power of attorney holder by name Arun Raj, who figures as the first witness in all the 3 complaints. The said power of attorney was given blank signed papers and the petitioner in collusion with the said power of attorney is misutilising such blank signed papers handed over to the said Arun Raj. Between the said Arun Raj and the petitioner, there were some transactions. Their relationship had run into rough weather and that is why in collusion with the said Arun Raj, the defacto complainants are raising false and vexatious allegations against the petitioner making use of blank signed papers. The petitioner is a person residing permanently in Thiruvananthapuram. Complaints have been filed against the petitioner before the Kongadu Police Station, Palakkad district. The purpose is only to vex and harass the petitioner. Subject to appropriate conditions, anticipatory bail may be granted to the petitioner in all the 3 cases, submits the learned counsel for the petitioner.

4. The learned Public Prosecutor opposes the applications. Case diaries are placed before the Court. It is submitted that the available indications convincingly point to the culpability and complicity of the petitioner. There are no circumstances justifying the invocation of the jurisdiction under Section 438 Cr.P.C, submits the learned Public Prosecutor.

5. Having heard the rival contestants, I find merit in the opposition by the learned Public Prosecutor . It is certainly for the petitioner to appear before the learned Magistrate having jurisdiction or the Investigating Officer and then seek regular bail in the ordinary course. I find no features in this case which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

6. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-